

Timely and Appropriate Enforcement Response to High Priority Violations – Revised 2014

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Timely and Appropriate Enforcement Response to High Priority Violations - 2014

■ The HPV Policy

EPA's enforcement response policy for certain violations of the Clean Air Act.

Provides a tool for enforcement agencies to prioritize enforcement activities.

Establishes a process for enforcement agencies to interact with EPA regarding these violations and request assistance, if needed, to resolve the violations.

Outlines EPA's expectations for appropriately responding to HPVs.

Enhances EPA's ability to conduct oversight of enforcement activities in an effort to promote national consistency.



High Priority Violations or HPV Policy- 2014 Revisions

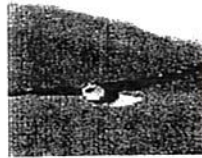
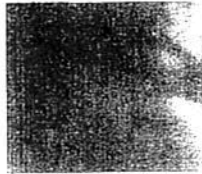
■ The Goals of 2014 Revision

Update the 1998 HPV Policy to reflect what EPA has learned and how enforcement decisions have changed over the past 15 years.

Enhance EPA's ability to *meaningfully* monitor actions regarding an important subset of CAA violations.

Foster a cooperative approach to case management with a focus on protection of public health.

Complement EPA's enforcement response policy regarding Federally Reportable Violations, also revised in 2014.



High Priority Violations or HPV Policy- 2014 Revisions

■ Scope of the HPV Policy

Applies to State, Local, Territorial, and Tribal agencies that enforce the Clean Air Act, collectively called "Enforcement Agencies."

The affected universe is comprised of

- Major sources as defined by the CAA Title V statute* or
- Any other stationary source with a Compliance Monitoring Strategy Plan.

Only applies to a federally enforceable violation that also meets one of the six HPV criteria.

Covers from the time of the discovery of an HPV through the resolution of the enforcement process.



High Priority Violations or HPV Policy- 2014 Revisions

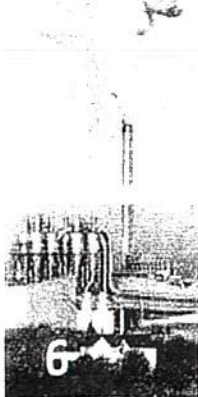
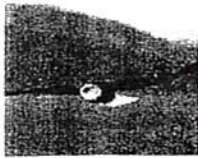
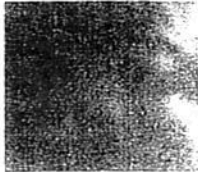
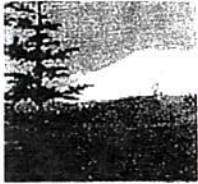
Implementation- October 1, 2014

2014 revised criteria applies to discovery of violations during compliance monitoring activities that occur after October 1, 2014

EPA will work with enforcement agencies to ensure the accuracy of the list of HPVs

Violations discovered before October 1, 2014, that are not addressed or resolved by October 1, 2014, should be reevaluated against the revised criteria and removed as an HPV, if necessary.

**Note that even though the violation no longer meets the revised criteria, it may still be a Federally Reportable Violation




Universe of Sources Subject to the HPV Policy

- Applies to only two categories of sources:

Major source defined in CAA Sec. 501(2), called a Title V Major Source.

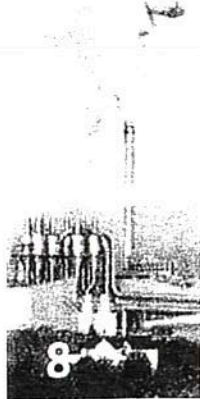
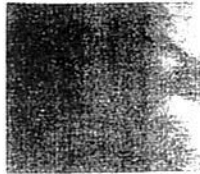
Any other stationary source (i.e., that doesn't meet the Sec. 501(2) definition for major source) that has a Compliance Monitoring Strategy or CMS plan.



Universe of Sources Subject to the HPV Policy

- CAA Sec. 501(2)- Major Source is a stationary source that emits or has the potential to emit:
 - 10 tpy of any one hazardous air pollutant (HAP) or 25 tpy of all HAPs;
 - 100 TPY of any air pollutant***; or
 - specific quantity of a nonattainment pollutant as defined in Nonattainment Provisions of the CAA, Part D (e.g., 25 tpy of VOC emissions in Severe Ozone Nonattainment areas).

* Note that the Title V definition does not distinguish between categories of sources like the New Source Review



Universe of Sources Subject to the HPV Policy

- Any other stationary source (NESHAP area sources or NSR minor sources) with a CMS Plan

Note: While a source must emit at least one pollutant in major amounts to be subject to the HPV policy, the HPV Criterion is not limited to violations of a pollutant for which the source is major.

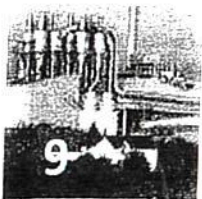
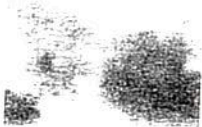
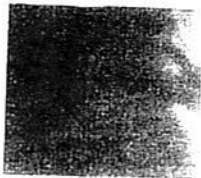
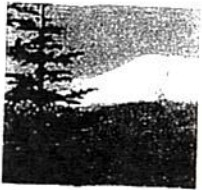
For example: A source that is major for NSR because it emits > 250 tpy of NO_x, could have a BACT limit on its VOC emissions even though it only emitted 90 tpy VOC when built. A violation of that BACT limit could be an HPV.

HPV Criteria

Criterion 1- Failure to obtain a New Source Review permit (for either attainment or non-attainment areas) and/or install BACT or LAER (including obtaining offsets) for any new major stationary source or major modification at a major stationary source.

This includes a violation at a minor source of an emission limit or permit condition such that the source's actual emission exceed (or are expected to exceed) the major stationary source threshold as defined in the applicable NSR regulations.

A year's worth of data is not necessary to determine that the "actual" emissions are expected to exceed the major source thresholds.





HPV Criteria

Criterion 2- A violation of any ***federally enforceable*** emission limitation, emission standard or operating parameter, which is a surrogate for emissions, that was issued pursuant to Title I, Part C or D, of the CAA and the implementing regulations, or the equivalent provision(s) in an EPA-approved implementation plan (state, local, territorial or tribal) where such violation continued (or is expected to continue) for at least seven days.

Includes violations that, while not necessarily continuous for 168 hours, reoccur (or reoccurred) regularly or intermittently for at least seven days.

There is a presumption that the violation is continuing unless the enforcement agency can document sufficient evidence to conclude that the violation is no longer ongoing and is unlikely to recur.

CEMS or COMs downtime should be included as periods of violations as long as the unit continues to operate.

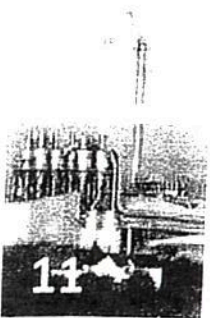
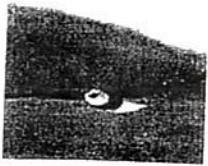
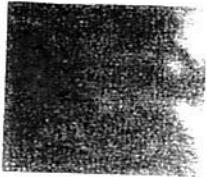
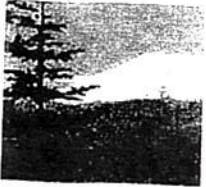
HPV Criteria

- **Criterion 3-** A violation of any emission limitation, emission standard or operating parameter, which is a surrogate for emissions, in an applicable Standards of Performance for New Sources (NSPS) (Part 60) or in an analogous regulation adopted by state, local, tribal or territorial authorities and EPA has granted delegation to enforce such regulations in lieu of the NSPS where such violation continued (or is expected to continue) for at least seven days.

Includes violations that, while not necessarily continuous for 168 hours, reoccur (or reoccurred) regularly or intermittently for at least seven days.

There is a presumption that the violation is continuing unless the enforcement agency can document sufficient evidence to conclude that the violation is no longer ongoing and is unlikely to recur.

CEMS or COMs downtime should be included as periods of violations as long as the unit continues to operate.





HPV Criteria

Criterion 4- A violation of any emission limitation, standard or surrogate parameter (emission or operating) of an applicable National Emission Standards for Hazardous Air Pollutants (NESHAP) (Parts 61 and Parts 63) **for major sources*** or in an analogous regulation adopted by state, local, tribal or territorial authorities and EPA has granted delegation to enforce such regulations in lieu of the NESHAP where such violation continued (or is expected to continue) for at least seven days.

Includes violations that, while not necessarily continuous for 168 hours, reoccur (or reoccurred) regularly or intermittently for at least seven days.

There is a presumption that the violation is continuing unless the enforcement agency can document sufficient evidence to conclude that the violation is no longer ongoing and is unlikely to recur.

*** Major sources of HAPs- not included to cover area source NESHAPs.**



HPV Criteria

Criterion 5- A violation that involves federally enforceable work practices, testing requirements, monitoring requirements, recordkeeping or reporting that substantially interferes with enforcement of a requirement or a determination of the source's compliance.

As in the previous HPV policy, a determination of what is substantial shall be part of a case-by-case analysis/discussion between the EPA Region and the enforcement agency.

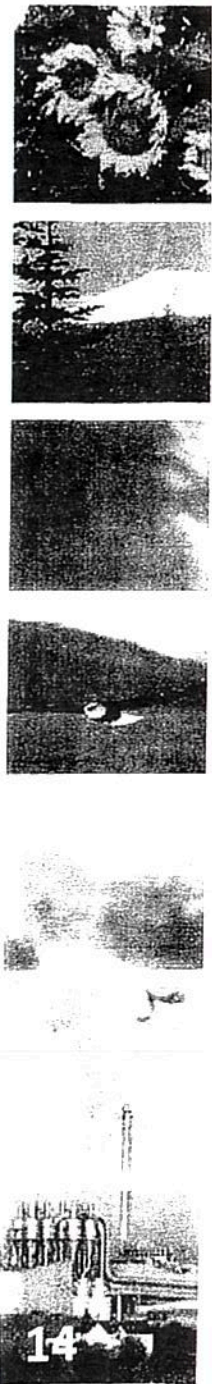
This criterion should not be used for violations of emissions or violations of parameters that are surrogate for emissions.

HPV Criteria

- **Criterion 6-** Any other violations specifically identified and communicated to enforcement agencies from time to time by the Director, Air Enforcement Division, U.S. EPA (general applicability) or as mutually agreed upon between the enforcement agency and corresponding EPA Region (case-by-case).

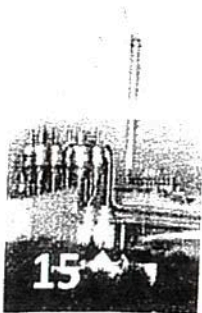
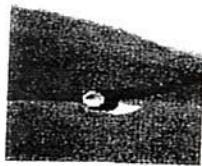
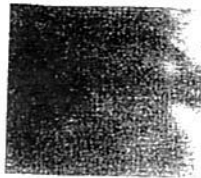
This criterion can include a violation at a minor or area source so long as both agencies agree that the violation warrants the oversight designated for HPVs.

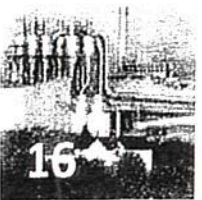
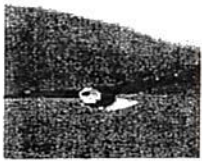
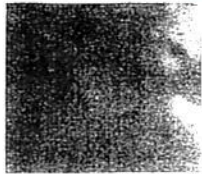
This criterion is also flexible enough to include any change in national enforcement priorities if needed in the future.



How Do NSR Minor or NESHAP Area Sources Become Subject

- NSR Minor Sources (with or without a CMS plan) are subject to this policy if the *source's violation* results in the actual emissions exceeding major source thresholds- HPV Criterion 1- Failure to obtain a NSR permit
- NESHAP Area source (with or without a CMS Plan) would be subject to this policy if it is determined that it did not have an enforceable limit prior to the applicability date or if it is determined that the source so regularly violates its limit such that could be seen as a sham limit- HPV Criterion 4





Removing the HPV Designation

Two Bases for Removing the Designation:

Further development of the evidence leads to a conclusion that even with additional efforts, it is unlikely that enough evidence can be developed to support or prevail on the claim.

The HPV does not involve (1) ongoing violations or an identifiable threat to the public **AND** (2) expenditure of resources on oversight of the enforcement agency's handling of the violation is not in the public interest.

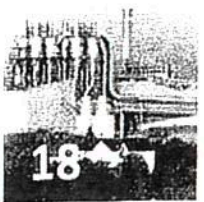
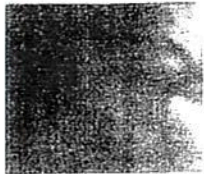
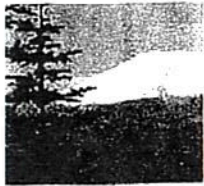
** Do not uncheck the HPV "box"- rather entering this data will remove the HPV from any oversight reports.



Timeline for Addressing the HPV Policy- 2014 Revisions

APPROPRIATE ENFORCEMENT RESPONSE FOR HPVS





Timeline for Addressing HPVs

■ **Step 1 - Discover the violation thru any compliance monitoring activity**

Inspection, audit, permit review

■ **Step 2- Identify the HPV**

In addition to the criterion that is met, also identify the air program code

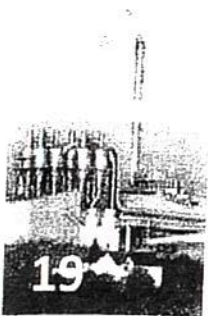
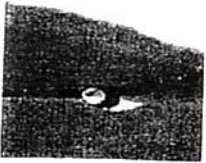
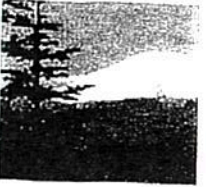
Should occur within 90 days of the Discovery Action

■ **Step 3- Advise the Company of the violation**

Can take many forms, e.g., conference, written letter

Not intended to satisfy jurisdictional requirements

Should occur within 135 days from the Discovery Action, 45 days from day zero



Timeline for Addressing HPVs

■ **Step 4- Address the HPV Using One of the Following:**

Issue a legally enforceable order that requires immediate action to come into compliance with the requirement violated;

Issue a legally enforceable order that imposes penalties, where the source has demonstrated that it is currently complying with the requirement violated;

Issue a legally enforceable order that imposes a schedule on the source to comply with the requirement violated and penalties for the violation; or

Transfer the matter to an organization with authority to initiate a civil or criminal judicial action (also known as a referral).



Timeline for Addressing HPVs

Examples of Addressing Actions

- 1. Filing a complaint and/or lodging a judicial consent decree;
- 2. Consent Agreement and/or Final Order approved by a judicial officer;
- 3. Referral to the Attorney General (or equivalent) for a state, territorial or tribal enforcement action;
- 4. Order issued pursuant to state, local, territorial or tribal legal authority;
- 5. Proposed SIP or FIP provision*;
- 6. EPA referral for civil action to the Department of Justice (DOJ);
- 7. EPA referral for criminal action to DOJ;
- 8. CAA Sec. 113(a) order;
- 9. CAA Sec. 167 order;
- 10. CAA Sec. 113(d) order;

* SIP or FIP Proposal also resolves the violation



Timeline for Addressing HPVs

Step 5- If the HPV is not Addressed within 270 from Discovery, 180 days from Day Zero

Develop Case-Specific Management Plan

Enforcement action will be considered untimely unless this case management plan is developed and discussed with the region

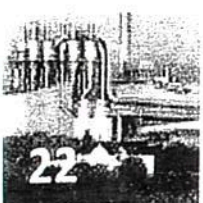
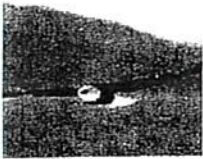
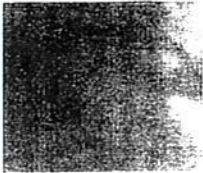
EPA expects that the case management plan be in effect 45 days from the 180 day period, or 225 days from Day Zero

Discuss the plan with the Region

Pollutant(s) at issue, including an estimate of type and amount of any on-going or recurring emissions

Specific Milestones for case resolution, proposed dates for settlement negotiations, commencing enforcement action (administrative or judicial)

Discussion of whether it may be appropriate for EPA to take the lead



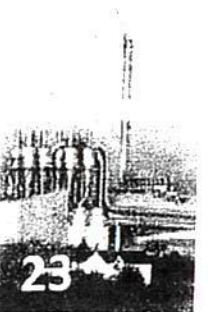
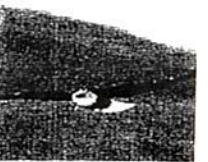
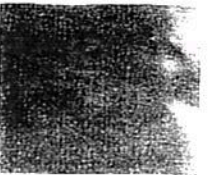
Timeline for Addressing HPVs

■ Step 6- Case-Specific Consultation

Region is expected to have case-specific consultation at least every three months until the HPV is addressed.

Can occur in the regularly scheduled quarterly conferences

Does not require a written plan to be submitted



Timeline for Addressing HPVs

Step 7- Resolving the HPV means:

Entry of an order adjudicating the case and the order is final;
For violations addressed administratively or through any non-judicial process, all penalties have been collected, all SEPs are completed, and the source is confirmed to be in compliance with respect to all HPVs; or

Proposal to revise to a state implementation plan or tribal implementation plan regarding the violation.

Resources

■ Questions about HPV Policy Implementation

Region 4

Dick Dubose, dubose.dick@epa.gov

Todd Russo, russo.todd@epa.gov

Ahmed Amanullah, amanullah.ahmed@epa.gov
(ICIS-Air related questions)

Air Enforcement Division-

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■ Questions about Federally Reportable Violations

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